

## ■ § 2.79 GOOD TIME FORFEITURE.

Although a forfeiture of good time will not bar a prisoner from receiving a parole hearing, D.C. Code 24-204 permits the Commission to parole only those prisoners who have substantially observed the rules of the institution. Consequently, the Commission will consider a grant of parole for a prisoner with forfeited good time only after a thorough review of the circumstances underlying the disciplinary infraction(s). The Commission must be satisfied that the prisoner has served a period of imprisonment sufficient to outweigh the seriousness of the prisoner's misconduct.

### *Notes and Procedures*

#### ■ 2.79-01. *Parole Not Contingent On Restoration Of Good Time.*

A grant of parole may not be made contingent on the restoration of good-time by institutional officials.

## ■ § 2.80 GUIDELINES FOR D.C. CODE OFFENDERS.

(a) *Applicability.* This guideline applies to any initial hearing for an adult prisoner conducted on or after January 2, 2001, and any rehearing for an adult prisoner who was given an initial hearing on or after August 5, 1998, but before January 2, 2001, and who did not receive any positive points for disciplinary infractions or negative points for superior program achievement at the initial hearing or any rehearing conducted before January 2, 2001. Any other prisoner will continue to have his case decided under the rule previously in effect (as set forth in the Appendix to this section).

(b) *Guidelines.* In determining whether an eligible prisoner should be paroled, the Commission shall apply the guidelines set forth in this section. The guidelines assign numerical values to pre- and post-incarceration factors. Decisions outside the guidelines may be made, where warranted, pursuant to paragraph (n) of this section.

(c) *Salient factor score and criminal record.* The prisoner's Salient Factor Score shall be determined by reference to the Salient Factor Scoring Manual in § 2.20. The Salient Factor Score is used to assist the Commission in assessing the probability that an offender will live and remain at liberty without violating the law. The prisoner's record of criminal conduct (including the nature and circumstances of the current offense) shall be used to assist the Commission in determining the probable seriousness of the recidivism that is predicted by the Salient Factor Score.

(d) *Disciplinary infractions.* The Commission shall assess whether the prisoner has been found guilty of committing significant disciplinary infractions while under confinement for the current offense.

(e) *Program achievement.*

(1) The Commission shall assess whether the prisoner has demonstrated ordinary or superior achievement in the area of prison programs, industries, or work assignments while under confinement for the current offense. Superior program achievement means program achievement that is beyond the level that the prisoner might ordinarily be expected to accomplish. Credit for program achievement may be granted regardless of whether the guidelines for disciplinary infractions have been applied for misconduct during the same period. The guidelines in this section presume that the prisoner will have ordinary program achievement.

(2) In the case of a prisoner who has declined to participate in institutional programming, a decision in the upper half of the applicable guideline range generally will be warranted, except that in the case of a prisoner who has a base point score of 3 or less, or who has a criminal record involving violence or sexual offenses and who has not participated in available programming to address a potential for criminal behavior of a violent or sexual nature, a decision above the guidelines may be warranted.

(f) *Base point score*. Add the applicable points from Categories I-III of the Point Assignment Table to determine the base point score.

#### POINT ASSIGNMENT TABLE

Categories	Points
<b>CATEGORY I: RISK OF RECIDIVISM</b> (Salient Factor Score)	
10-8 (Very Good Risk) .....	+0
7-6 (Good Risk) .....	+1
5-4 (Fair Risk) .....	+2
3-0 (Poor Risk) .....	+3
<b>CATEGORY II: CURRENT OR PRIOR VIOLENCE (Type of Risk)</b> Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. Violence in current offense, and any felony violence in two or more prior offenses. . .	+4
B. Violence in current offense, and any felony violence in one prior offense. ....	+3
C. Violence in current offense: .....	+2
D. No violence in current offense and any felony violence in two or more prior offenses..	+2
E. Possession of firearm in current offense if current offense is not scored as a crime of violence. ....	+2
F. No violence in current offense and any felony violence in one prior offense. ....	+1
<b>CATEGORY III: DEATH OF VICTIM OR HIGH LEVEL VIOLENCE</b> Note: Use highest applicable subcategory. If no subcategory is applicable, score = 0. A current offense that involved high level violence must be scored under both Category II (A, B, or C) and under Category III.	
A. Current offense was high level or other violence with death of victim resulting. . .	+3
B. Current offense involved attempted murder, conspiracy to murder, solicitation to murder, or any willful violence in which the victim survived despite death having been the most probable result at the time the offense was committed. ....	+2
C. Current offense involved high level violence (other than the behaviors described above). ....	+1
<b>BASE POINT SCORE (Total of Categories I-III)</b>	

(g) *Definitions and instructions for application of point assignment table.*

(1) *Salient factor score* means the salient factor score set forth at § 2.20.

(2) *High level violence* in Category III means any of the following offenses ---

(i) Murder;

(ii) Voluntary manslaughter;

(iii) Arson of a building in which a person other than the offender was present or likely to be present at the time of the offense;

- (iv) Forcible rape or forcible sodomy (first degree sexual abuse);
  - (v) Kidnapping, hostage taking, or any armed abduction of a victim during a carjacking or other offense;
  - (vi) Burglary of a residence while armed with any weapon if a victim was in the residence during the offense;
  - (vii) Obstruction of justice through violence or threats of violence;
  - (viii) Any offense involving sexual abuse of a person less than sixteen years of age;
  - (ix) Mayhem, malicious disfigurement, or any offense defined as other violence in paragraph (g)(4) of this section that results in *serious bodily injury* as defined in paragraph (g)(3) of this section;
  - (x) Any offense defined as *other violence* in paragraph (g)(4) of this section in which the offender intentionally discharged a firearm;
- (3) *Serious bodily injury* means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- (4) *Other violence* means any of the following felony offenses that does not qualify as *high level violence* ---
- (i) Robbery;
  - (ii) Residential burglary;
  - (iii) Felony assault;
  - (iv) Felony offenses involving a threat, or risk, of bodily harm;
  - (v) Felony offenses involving sexual abuse or sexual contact;
  - (vi) Involuntary manslaughter (excluding negligent homicide).
- (5) Attempts, conspiracies, and solicitations shall be scored by reference to the substantive offense that was the object of the attempt, conspiracy, or solicitation; except that Category IIIA shall apply only if death actually resulted.
- (6) *Current offense* means any criminal behavior that is either:
- (i) Reflected in the offense of conviction, or
  - (ii) Is not reflected in the offense of conviction but is found by the Commission to be related to the offense of conviction (*i.e.*, part of the same course of conduct as the offense of conviction). In probation violation cases, the current offense includes both the original offense and the violation offense, except that the original offense shall be scored as a prior conviction (with a prior commitment) rather than as part of the current offense, if the prisoner served more than six months in prison for the original offense before his probation commenced
- (7) Category IIE applies whenever a firearm is possessed by the offender during, or is used by the offender to commit, any offense that is not scored under Category II(A-D). Category IIE also applies when the current offense is felony unlawful possession of a firearm and there is no other current offense. Possession for purposes of Category IIE includes constructive possession.
- (8) Category IIIA applies if the death of a victim is:
- (i) Caused by the offender, or
  - (ii) Caused by an accomplice and the killing was planned or approved by the offender in furtherance of a joint criminal venture.
- (h) *Determining the base guideline range.* Determine the base guideline range for adult prisoners from the following table:

Base Point Score	Base Guideline Range
3 or less	zero months
4	12-18 months
5	18-24 months
6	36-48 months
7	54-72 months
8	72-96 months
9	110-140 months
10	136-172 months.

(i) *Months to parole eligibility.* Determine the total number of months until parole eligibility.

(j) *Guideline range for disciplinary infractions.* Determine the applicable guideline range from § 2.36 for any significant disciplinary infractions since the beginning of confinement on the current offense in the case of an initial hearing, and since the last hearing in the case of a rehearing. If there are no significant disciplinary infractions, this step is not applicable.

(k) *Guidelines for superior program achievement.* If superior program achievement is found, the award for superior program achievement shall be one-third of the number of months during which the prisoner demonstrated superior program achievement. The award is determined on the basis of all time in confinement on the current offense in the case of an initial hearing, and on the basis of time in confinement since the last hearing in the case of a rehearing. If superior program achievement is not found, this step is not applicable. Note: When superior program achievement is found, it is presumed that the award will be based on the total number of months since the beginning of confinement on the current offense in the case of an initial hearing, or since the last hearing in the case of a rehearing. Where, however, the Commission determines that the prisoner did not have superior program achievement during the entire period, it may base its decision solely on the number of months during which the prisoner had superior program achievement.

(l) *Determining the total guideline range at an initial hearing.* At an initial hearing---

(1) Add together the minimum of the base point guideline range [from paragraph (h) of this section], the number of months required by the prisoner's parole eligibility date [from (i) of this section], and the minimum of the guideline range for disciplinary infractions, if applicable [from paragraph (j) of this section]. Then subtract the award for superior program achievement, if applicable [from paragraph (k) of this section]. The result is the minimum of the Total Guideline Range.

(2) Add together the maximum of the base point guideline range [from paragraph (h) of this section], the number of months required by the prisoner's parole eligibility date [from paragraph (i) of this section], and the maximum of the guideline range for disciplinary infractions, if applicable [from paragraph (j) of this section]. Then subtract the award for superior program achievement, if applicable [from paragraph (k) of this section]. The result is the maximum of the Total Guideline Range.

Refer to §2.75(a) (1) for options after compilation of the Total Guideline Range.

(m) *Determining the total guideline range at a reconsideration hearing.* At a reconsideration hearing—

(1) Add together the minimum of the Total Guideline Range from the previous hearing, and the minimum of the guideline range for disciplinary infractions since the previous hearing, if applicable [from paragraph (j) of this section]. Then subtract the award for superior program achievement, if applicable [from paragraph (k) of this section]. The result is the minimum of the Total Guideline Range for the current hearing.

(2) Add together the maximum of the Total Guideline Range from the previous hearing, and the maximum of the guideline range for disciplinary infractions since the previous hearing, if applicable [from paragraph (j) of this section]. Then subtract the award for superior program achievement since the previous hearing, if applicable [from paragraph (k) of this section]. The result is the maximum of the Total Guideline Range for the current hearing.

Refer to §2.75(a) (1) for options after compilation of the Total Guideline Range.

(n) *Decisions outside the guidelines.*

(1) The Commission may, in unusual circumstances, grant or deny parole to a prisoner notwithstanding the guidelines. Unusual circumstances are case-specific factors that are not fully taken into account in the guidelines, and that are relevant to the grant or denial of parole. In such cases, the Commission shall specify in the notice of action the specific factors that it relied on in departing from the applicable guideline or guideline range. If the prisoner is deemed to be a poorer or more serious risk than the guidelines indicate, the Commission shall determine what Base Point Score would more appropriately fit the prisoner's case, and shall render its initial and rehearing decisions as if the prisoner had that higher Base Point Score. It is to be noted that, in some cases, an extreme level of risk presented by the prisoner may

make it inappropriate for the Commission to contemplate a parole at any hearing without a significant change in the prisoner's circumstances.

(2) Factors that may warrant a decision above the guidelines include, but are not limited to, the following:

(i) *Poorer parole risk than indicated by salient factor score.* The offender is a poorer parole risk than indicated by the salient factor score because of —

(A) Unusually persistent failure under supervision (pretrial release, probation, or parole);

(B) Unusually persistent history of criminally related substance (drug or alcohol) abuse and resistance to treatment efforts; or

(C) Unusually extensive prior record (sufficient to make the offender a poorer risk than the "poor" prognosis category).

(ii) *More serious parole risk.* The offender is a more serious parole risk than indicated by the total point score because of ---

(A) Prior record of violence more extensive or serious than that taken into account in the guidelines;

(B) Current offense demonstrates extraordinary criminal sophistication, criminal professionalism in the employment of violence or threats of violence, or leadership role in instigating others to commit a serious offense;

(C) Unusual cruelty to the victim (beyond that accounted for by scoring the offense as high level violence), or predation upon extremely vulnerable victim;

(D) Unusual propensity to inflict unprovoked and potentially homicidal violence, as demonstrated by the circumstances of the current offense; or

(E) Additional serious offense(s) committed after (or while on bond or fugitive status from) current offense that show unusual capacity for sustained, repeated violent criminal activity.

(4) Factors that may warrant a decision below the guidelines include, but are not limited to, the following:

(i) *Better parole risk than indicated by salient factor score.* The offender is a better parole risk than indicated by the salient factor score because of (applicable only to offenders who are not already in the very good risk category) —

(A) A prior criminal record resulting exclusively from minor offenses;

(B) A substantial crime-free period in the community for which credit is not already given on the Salient Factor Score;

(C) A change in the availability of community resources leading to a better parole prognosis;

(ii) *Other factors:*

(A) Unusually lengthy period of incarceration on the minimum sentence (in relation to the seriousness of the offense and prior record) that warrants an initial parole determination as if the offender were being considered at a rehearing;

(B) Substantial period in custody on other sentence(s) sufficient to warrant a finding in paragraph (n)(4) of this section; or

(C) Clearly exceptional program achievement.

#### *APPENDIX TO § 2.80*

(a) *Applicability.*

(1) The guidelines in this Appendix apply to:

(i) Any adult offender who received an initial hearing on or after August 5, 1998 and before January 2, 2001, and who also received positive points for disciplinary infractions or negative points for superior program achievement at any hearing (initial or rehearing) during the above period; and

(ii) Any youth offender who received an initial hearing on or after August 5, 1998.

(2) For prisoners whose initial hearings were held prior to August 5, 1998, the Commission shall render its decisions by reference to the guidelines applied by the D.C. Board of Parole. However, when a decision outside such guidelines has

been made by the Board, or is ordered by the Commission, the Commission may determine the appropriateness and extent of the departure by comparison with the guidelines in this appendix. The Commission may also correct any error in the calculation of the D.C. Board's guidelines.

(b) *Guidelines.* Apply § 2.80(b).

(c) *Salient factor score and criminal record.* Apply § 2.80(c).

(d) *Disciplinary infractions.* The Commission shall assess whether the prisoner has been found guilty of committing disciplinary infractions while under confinement for the current offense. The Commission shall refer to the offense classification tables of the D.C. Department of Corrections or the Bureau of Prisons, as applicable, in determining whether the prisoner's disciplinary record should be counted on the point score. A single Class I or Code 100 offense, or two or more Class II or Code 200 offenses, shall be counted as negative institutional behavior at an initial hearing or any rehearing. A persistent record of lesser offenses may also be counted as negative institutional behavior at an initial hearing or a rehearing. At initial hearings, an infraction-free period of at least three years preceding the date of the hearing may be considered by the Commission as sufficient to exclude from consideration a previous record of Class I (or Code 100) or Class II (or Code 200) offenses, provided that such offenses would result in not more than one point added to the prisoner's score.

(e) *Program achievement.* The Commission shall assess whether the prisoner has demonstrated ordinary or superior achievement in the area of prison programs, industries, or work assignments while under confinement for the current offense. Superior Program Achievement means program achievement that is beyond the level that the prisoner might ordinarily be expected to accomplish. Where prison programs and work assignments are limited or unavailable, the Commission may exercise discretion based on the prisoner's record of behavior. Points may be deducted for program achievement regardless of whether points have been added for negative institutional behavior during the same period.

(f) *Base Point Score.* Add the applicable points from Categories I-III of the Point Assignment Table in § 2.80 (f) to determine the Base Point Score (using the definitions in § 2.80(g)).

(g) *Negative institutional behavior.* Determine the points applicable, if any, for negative institutional behavior (Category IV).

#### CATEGORY IV: NEGATIVE INSTITUTIONAL BEHAVIOR

##### Notes:

(1) Use the highest applicable subcategory. If no subcategory is applicable, score = 0.

(2) In some cases, negative institutional behavior that involves violence will result in a higher score if scored as an additional current offense under Categories II and/or III, than if scored under Category IVA. In such cases, the prisoner's point score is recalculated to reflect the conduct as an additional current offense under Categories II and/or III, rather than as a disciplinary infraction under Category IVA. For example, the attempted murder of another inmate will result in a higher score when treated as an additional current offense under Categories II and III, if the offense of conviction was scored under Category IIC only as *violence in current offense*. If negative institutional behavior is treated as an additional current offense, points may nonetheless be assessed under Category IVA or B for other disciplinary infractions.

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##### A. Aggravated negative institutional behavior involving:

(1) assault upon a correctional staff member,  
with bodily harm inflicted or threatened,

(2) possession of a deadly weapon,

(3) setting a fire so as to risk human life,

(4) introduction of drugs for purposes  
of distribution, or

(5) participating in a violent demonstration or riot. . . . . +2

B. Ordinary negative institutional behavior. . . . . +1

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(h) *Superior program achievement.* Determine the (minus) points applicable, if any, for superior or ordinary program achievement (Category V).

## CATEGORY V: PROGRAM ACHIEVEMENT

**Note:** Use the highest applicable subcategory. If no subcategory is applicable, score = 0.

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A. No program achievement. . . . .	0
B. Ordinary program achievement. . . . .	-1
C. Superior program achievement. . . . .	-2

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(i) Determine the Total Point Score by adding the Base Point Score (Categories I, II, and III) to any points applicable for Negative Institutional Behavior (Category IV) and then subtracting any points applicable for Program Achievement (Category V).

(j) *Guidelines for decisions at initial hearing - adult offenders.* In considering whether to parole an adult offender at an initial hearing, the Commission shall determine the offender's Total Point Score and then consult the following guidelines for the appropriate action:

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Total Points	Guideline Recommendation
(1) IF POINTS =0:	Parole at initial hearing with low level of supervision indicated.
(2) IF POINTS =1:	Parole at initial hearing with high level of supervision indicated.
(3) IF POINTS =2:	Parole at initial hearing with highest level of supervision indicated.
(4) IF POINTS =3+:	Deny parole at initial hearing and schedule rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (l) of this Appendix.

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(k) *Guidelines for decisions at initial hearing - youth offenders.* In considering whether to parole a youth offender at an initial hearing, the Commission shall determine the youth offender's total point score and then consult the following guidelines for the appropriate action:

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Total Points	Guideline Recommendation
(1) IF POINTS = 0	Parole at initial hearing with conditions established to address treatment needs;
(2) IF POINTS = 1+	Deny parole at initial hearing and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (l) of this Appendix, whichever is less.

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(l) *Guidelines for time to rehearing - adult offenders.*

(1) If parole is denied or rescinded, the time to the subsequent hearing for an adult offender shall be determined by the following guidelines:

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**Base Point Score    Months to Rehearing**  
(Categories I  
through III)

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0-4 . . . . .	12 - 18
5 . . . . .	18 - 24
6 . . . . .	18 - 24
7 . . . . .	18 - 24
8 . . . . .	18 - 24
9 . . . . .	22 - 28
10 . . . . .	26 - 32

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(2) The time to a rehearing shall be determined by the prisoner's Base Point Score, and not by the Total Point Score at the current hearing, which indicates only whether parole should be granted or denied. Exception: In the case of institutional misconduct deemed insufficiently serious to warrant the addition of one or more points for negative

institutional behavior, the Commission may nonetheless deny or rescind parole and render a decision based on the guideline ranges at § 2.36.

(3) At any initial hearing or rehearing, if the prisoner's Total Point Score is 4 or less, the Commission may order both a rehearing date and a presumptive parole date that is not more than 9 months from the rehearing date. Such presumptive date may be converted to a parole effective date following the rehearing, or the case may be reopened based on new favorable information and a parole effective date granted on the record.

(m) *Guidelines for decisions at subsequent hearing - adult offenders.* In determining whether to parole an adult offender at a rehearing or rescission hearing, the Commission shall take the Total Point Score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total Points	Guideline Recommendation
IF POINTS = 0-3	Parole with highest level of supervision indicated.
IF POINTS = 4+	Deny parole at rehearing and schedule a further rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (l) of this Appendix.

(n) *Guidelines for decisions at subsequent hearing - youth offenders.*

(1) In determining whether to parole a youth offender appearing at a rehearing or rescission hearing, the Commission shall take the Total Point Score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total Points	Guideline Recommendation
IF POINTS = 0-3	Parole with highest level of supervision indicated.
IF POINTS = 4+	Deny parole and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (l) of this Appendix, whichever is less.

(2) Prison officials may in any case recommend an earlier rehearing date than ordered by the Commission if the Commission's program objectives have been met.

(o)(1) The Commission may, in unusual circumstances, waive the Salient Factor Score and the pre- and post-incarceration factors set forth in this section to grant or deny parole to a prisoner notwithstanding the guidelines, or to schedule a reconsideration hearing at a time different from that indicated in paragraph (l) of this Appendix. Unusual circumstances are case-specific factors that are not fully taken into account in the guidelines, and that are relevant to the grant or denial of parole. In such cases, the Commission shall specify in the notice of action the specific factors that it relied on in departing from the applicable guideline or guideline range. For examples of factors that may warrant a decision outside the applicable guideline range, see § 2.80(n).

(2) If the prisoner is deemed to be a poorer or more serious risk than the guidelines indicate, the Commission shall determine what Base Point Score would more appropriately fit the prisoner's case, and shall render its initial and rehearing decisions as if the prisoner had that higher Base Point Score. If possible, the factors justifying such a departure shall be fully accounted for in the initial continuance, so that the guidelines can be followed at subsequent hearings. In some cases, however, an extreme level of risk presented by the prisoner may make it inappropriate for the Commission to contemplate a parole at any hearing without a significant change in the prisoner's circumstances.

#### *Notes and Procedures*

##### **■** 2.80-01. *Current Offense.*

For purposes of the point score, determinations regarding the current offense (whether it is a crime of violence or a crime of high violence, and whether death resulted), shall be based on the nature and circumstances of the current offense and are not limited to the offense of which the defendant was convicted. Disputed facts are to be resolved under § 2.19(c).



#### ■ 2.80-02. *Prior Crime of Violence.*

For purposes of the point score, the determination of whether a prisoner has one or more prior crimes of violence is based on the conviction offense. If, however, the Commission finds pursuant to § 2.19(c) that (1) a defendant has committed a prior crime of violence that did not result in a conviction of a crime of violence; and (2) a conviction for the offense actually committed would have resulted in a higher point score, such conduct may be considered as an aggravating factor and may warrant an upward departure from the guidelines (as a more serious risk). In the case of a departure on this basis, the departure should be consistent with the higher point score.

#### ■ 2.80-03. *Rounding of Superior Program Achievement Award.*

If an award for superior program achievement determined under §2.80(k) is a number other than a whole number (*e.g.*, 12.67 months), round to the nearest whole number (.50 and higher is to be rounded upward, and .49 and lower is to be rounded downward).